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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/927,960 | 08/10/2001 | Anthony J. Glaszcz | 420.003 | 5381 |

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EXAMINER

SELF, SHELLEY M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3725 | |

DATE MAILED: 08/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/927,960 | GLASZCZ ET AL. |
| Examiner | Art Unit | |
| Shelley Self | 3725 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 July 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) 19 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 10 July 2003 is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

6) Other: _____

DETAILED ACTION

Response to Amendment

The amendment filed on July 10, 2003 under 37 CFR 1.131 has been considered but is ineffective to overcome the prior art reference.

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on July 10, 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what "the frame" refers to; there is no antecedent basis for this term in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. (H1,819). With regard to claims 1 and 11, Anderson discloses a bale shape monitor for a round baler having a bale-forming chamber, comprising: a movable member (136), a pair of spaced apart rollers (172; fig. 9) mounted to the movable member and a sensor arrangement (124,126) associates with the rollers. As to the differential in the speed of rotation of the rotatable members, because speed is directly related to distance traveled, it is inherent in Anderson, that as differentials in the diameter of left and right end of the bale occur, the rotational sensors (172, 124, 126) complete a revolution at differing speeds, i.e. quicker/faster, and thus sensing of the speed results.

Claims 2, 4, 5, 8-10 and 12-18 are rejected as noted in the previous Office Action.

With regard to claim 3, as best as can be understood, Anderson discloses a frame configured to contact the bale at a location between the rollers.

With regard to claims 6 and 7, Anderson discloses a method of detecting a differential in bale diameter in a round bale comprising the steps of positioning a pair of rotatable members (182) within the bale-forming chamber (25), wherein the rotatable members are laterally spaced (figs. 9-12), forming a bale (fig. 1), sensing rotation (124, 126; figs. 9-12) and outputting a signal (204, 218). As to the differential in the speed of rotation of the rotatable members, because speed is directly related to distance traveled, it is inherent in Anderson, that as differentials in the

diameter of left and right end of the bale occur, the rotational sensors (172, 124, 126) complete a revolution at differing speeds, i.e. quicker/faster, and thus sensing of the speed results.

Allowable Subject Matter

Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments have been carefully considered but are not deemed persuasive. Applicant's arguments are drawn to failure of Anderson et al. to disclose a sensor arrangement that provides a signal in response to "a sensed differential in the speed of rotation of the rollers". This argument however, is not found persuasive because, it is inherent in Anderson that as the diameter of the left and right end of the bale differentiate, the speed of the sensors would change (i.e. at smaller diameters the sensor completes a revolution of the bale quicker/faster than at larger diameters) and thus a sensed differential in the speed of rotation of the rollers results. Additionally, regarding a sensed differential in the speed of the rotation of the rollers, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (703) 305-5299. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Allen Ostrager can be reached at (703) 308-3136. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9306 for regular and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

SSelf
August 12, 2003


ALLEN OSTRAGER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700